

Gillian M. Ross (Bar No. 127116)
Leonard A. Marquez (Bar No. 206885)
WENDEL, ROSEN, BLACK & DEAN LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-403
Telephone: (510) 834-6600
Fax: (510) 834-1928

Attorneys for Defendants
D.R. Horton, Inc., DHI Mortgage Company, Ltd.,
Donald Horton, Donald Tomnitz, Michael Mason,
Daniel Callihan, Annie Schankin and James Frasure

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PATRICE A. MISSUD, JULIE D.
MISSUD,

Plaintiff,

vs.

D.R. HORTON, INC.; DHI MORTGAGE
COMPANY, LTD, LP.; DONALD
HORTON; DONALD TOMNITZ;
MICHAEL MASON; DANIEL
CALLIHAN; ANNIE SCHANKIN;
JAMES FRASURE; and DOES 1-200,

Defendants.

Case No. C07-2625 JL

**RESPONSE TO NONCOMPLIANCE
WITH COURT ORDER**

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036

1 D.R. Horton, Inc., DHI Mortgage Company, Ltd., Donald Horton, Donald Tomnitz,
2 Michael Mason, Daniel Callihan, Annie Schankin and James Frasure (“Defendants”) hereby
3 respond to the Court’s Notice Re: Noncompliance with Court Order dated September 6, 2007
4 (the “Noncompliance Order”).

5 Defendants have not conferred with plaintiffs as to ADR or case management pursuant to
6 the Court’s Order Setting Initial Case Management Conference and ADR Deadlines dated May
7 17, 2007 (the “Scheduling Order”), because Defendants have objected to the jurisdiction of the
8 Court and filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(2) for lack
9 of personal jurisdiction (the “Motion to Dismiss”). The Motion to Dismiss is currently scheduled
10 for hearing on September 19, 2007 before Judge Larson. An initial case management conference
11 is also set for that date.

12 Defendants have not participated in pre-trial proceedings other than the filing of the
13 Motion to Dismiss in order to avoid any implication that the Defendants have waived their
14 jurisdictional objections by participating in such proceedings. The defense of lack of personal
15 jurisdiction may be waived by acts acknowledging the court’s power to adjudicate. *See,*
16 *Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial* (The Rutter
17 Group 2007), § 9:33, citing, *inter alia, Broadcast Music, Inc. v. M.T.S. Enterprises, Inc.*,
18 811 F.2d 278, 280–281 (5th Cir. 1987) (participation in pre-trial proceedings was factor in waiver
19 of jurisdictional objections).

20 Defendants are prepared to fully comply with all pre-trial case management and ADR
21 rules and procedures if jurisdiction is found as to any of the Defendants objecting to personal
22 jurisdiction in this Court or if Defendants are otherwise ordered to do so by the Court following
23 its consideration of this response. A PDF copy of this response will be emailed to the Court’s
24 ADR Unit at adr@cand.uscourts.gov, pursuant to the Noncompliance Order.

25 Defendants do not by this response consent or submit to the jurisdiction of the Court or
26 otherwise waive any objection to the exercise of jurisdiction over them by this Court.

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Respectfully submitted.

Dated: September 6, 2007

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/Gillian M. Ross

Gillian M. Ross
Attorneys for Defendants
D.R. Horton, Inc., DHI Mortgage
Company, Ltd., Donald Horton, Donald
Tomnitz, Michael Mason, Daniel Callihan,
Annie Schankin and James Frasure